

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FELIPE FERNANDEZ, on behalf of himself and
all others similarly situated,

Plaintiff,

-against-

BUFFALO JACKSON TRADING CO., LLC,

Defendant.

Case No.: 1: 24-cv-04878-JPC

**DECLARATION OF ALEXANDER
HOOD IN SUPPORT OF DEFENDANT
BUFFALO JACKSON TRADING CO.,
LLC'S MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT**

I, Alexander (Xan) Hood, hereby declare, pursuant to U.S.C. § 1746, that the following is true and correct:

1. I am the owner and founder of Buffalo Jackson Trading Co., LLC. ("Buffalo Jackson"). This declaration is made based on my personal knowledge, my review of records maintained by Buffalo Jackson in the ordinary course of business, and my review of the website, www.buffalo.jackson.com (the "Website"). I have personal knowledge of, and I am familiar with, Buffalo Jackson's business and the Website, and the above-captioned dispute.

2. I submit this Declaration in support of Buffalo Jackson's Motion to Dismiss the First Amended Complaint in this action, dated September 9, 2024 (the "FAC" ECF No. 9).

3. Buffalo Jackson is an American heritage leather goods and apparel e-commerce retailer. Buffalo Jackson does not have any customer-facing brick & mortar locations. The Website is a stand-alone purely e-commerce website.

4. I founded the company in Colorado Springs, Colorado, before moving the headquarters to the town of Matthews, North Carolina where the company is presently based. This history is the truest representation of our brand in that we strive to be a blend of all that's good from the South with an influence of classic Western Wilderness.

5. Buffalo Jackson proudly embodies certain values, including hard work, pioneering, love for adventure, and a dedication to a simpler way of life. We take pride in crafting products that reflect the company's time-honored traditions as well as its rugged spirit.

6. Moreover, we strive to ensure that our business is at all times conducted consistently with certain nonnegotiable ethical values.

7. From reviewing the FAC, I am aware that the Plaintiff alleges that Buffalo Jackson *"has engaged in acts of intentional discrimination,"* including purposefully *"[c]onstructing and maintaining a website that is inaccessible to visually-impaired individuals."*¹ This allegation is patently absurd, offensive, and anathema to the core of our mission and business model. At Buffalo Jackson, we market and sell our quality products to all individuals, from all walks of life. All are welcome and we discriminate against no one.

8. In particular, Buffalo Jackson's website is accessible to the blind and visually impaired. Long before Plaintiff supposedly visited the Website, Buffalo Jackson had expended funds to ensure full and equal enjoyment for persons with disabilities specifically to help customers who did want to purchase products that were blind and visually impaired.

9. Buffalo Jackson had undertaken to comply with the Web Content Accessibility Guidelines ("WCAG") guidelines published by the World Wide Web Consortium ("W3C").

¹ FAC ¶ 59.

WCAG 2.1 level AA are the guidelines that Plaintiff claims are the “well-established guidelines for making websites accessible to blind and visually-impaired people.” (FAC ¶ 36)

10. Because Buffalo Jackson desires to make its Website accessible to all individuals, including the blind and visually impaired, on March 25, 2021 (years prior to Plaintiff’s supposed visit to the Website), Buffalo Jackson implemented an accessibility plugin to the Website powered by accessiBe. The accessiBe plugin (or widget) is an artificial intelligence (AI)-powered accessibility compliance solution that ensures the Website provides a digital experience that adheres as strictly as possible to the WCAG 2.1 level AA guidelines. Buffalo Jackson added the accessiBe plugin specifically to ensure that blind and visually impaired individuals were not denied access to its services.

11. From my understanding, as soon as it was implemented on the Website, accessiBe’s accessibility interface began applying automated AI technology designed to make the Website fully accessible to blind and/or visually impaired screen reader users like Plaintiff.

12. The moment that a user with a screen-reader enters the Website, they immediately receive a prompt from accessiBe to enter the “Screen-Reader Profile” so they can browse and operate the Website effectively.

13. Moreover, because the Website is fluid, and content is added/removed regularly, accessiBe provides daily scans to catch and fix content updates. Additionally, accessiBe applies monthly compliance audits. Upon automatically identifying any changes to the Website, if violations appear in any newly-published content, those violations are immediately remediated by accessiBe. This feature was very important to me in choosing my accessibility solution because I wanted a product that would ensure that the Website is always and consistently accessible.

14. I am informed that accessiBe tested the Website through the resent date and, determined that the Website is WCAG 2.1 AA compliant. Attached at Exhibit 1 is the most-recent Remediation Report (received from accessiBe on September 28, 2024), which is a monthly report that summarizes the code fixes applied to the Website by the accessiBe accessWidget plugin. This particular report shows that, over the last month almost 1400 remediations were made on the Website to help improve the experience for blind and visually impaired users.

15. Buffalo Jackson is committed to maintaining the accessibility of the Website into the future. As long as accessiBe remains operating on the Website, the plugin will ensure that the Website is complaint with WCAG 2.1 AA, and/ or any successor guidelines published by the WC3, that there are no WCAG errors (and if any are identified after a scan, they will be remediated), and that the Website is otherwise accessible to all users.

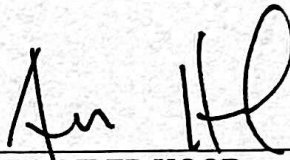
16. If forced to litigate this action, Buffalo Jackson will demonstrate these ongoing efforts around accessibility and meeting the evolving guidelines that are typically used to measure website accessibility.

17. Buffalo Jackson invites people with disabilities to contact us if they encounter any accessibility issues. In fact, if the complaint had any issues, it would have been handled directly by our one dedicated customer service person on our team and/or referred directly to me. The Website includes direct contact information, including a direct toll free 800 telephone number and email address. Support@buffalojackson.com

18. We have no record of Plaintiff contacting us regarding any supposed accessibility issues. Buffalo Jackson would have been more than happy to accommodate Plaintiff in any way possible to ensure that Plaintiff was able to make a purchase both at the time he alleges and at any

future time. In fact, had Plaintiff contacted us, I would have likely personally gotten involved because it is important to me that all customers are properly accommodated. We would have spent as much at time as necessary to ensure that the customer's needs were met. Unfortunately, I don't think that making a purchase was the Plaintiff's objective. It appears that Plaintiff and his lawyers were most concerned with creating a predicate for this frivolous lawsuit.

Dated: October 21, 2024



ALEXANDER HOOD